

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-4128

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

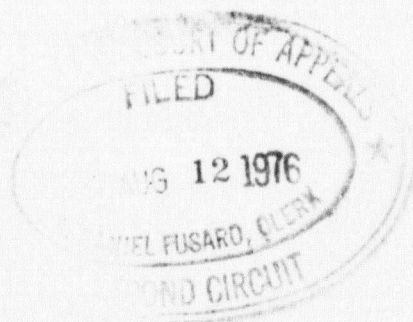
HECTOR ADOLFO MONTOYA-ALVAREZ,
Petitioner

v.

IMMIGRATION & NATURALIZATION SVC.,
Respondent

Civil Action No. 76-4128

JOINT APPENDIX



PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

HECTOR ADOLFO MONTOYA-ALVAREZ,
Petitioner

V.

IMMIGRATION & NATURALIZATION SVC.,
Respondent

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Civil Action No. 76-4128

JOINT APPENDIX

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BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. **A18 561 513**

In the Matter of **HECTOR ADOLFO MONTOYA-ALVAREZ**

Respondent.

c/o Hartford Correctional Center, 72 Seyms Street, Hartford, Connecticut

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of **Colombia** and a citizen of **Colombia**;
3. You entered the United States at **Miami, Florida** on
or about **February 2, 1969**
(date)

SEE CONTINUATION SHEET ATTACHED HERETO AND MADE A PART HEREOF

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241 (a) (2) of the Immigration and Nationality Act, which provides that, after admission as a nonimmigrant under Section 101 (a) (15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at **Room 367, Post Office Building, Hartford, Connecticut**

on **Monday, Dec. 16, 1974** at **9:30** a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: **December 4, 1974**

W. J. Kennedy
Signature and title of issuing officer)
DISTRICT DIRECTOR
HARTFORD, CONNECTICUT
(City and State)

J. M. A.

*RRM
ACM*

A-1

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION
WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE
CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated herein may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

- ☐ Detained in the custody of this Service. ☐ Released on recognizance.
☒ Released under bond in the amount of \$ **2,000**

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☒ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

Before:

Austin C. Mattson
(signature and title of witness or officer)

[Signature]
(signature of respondent)

12/4/74
(date)

CERTIFICATE OF SERVICE

PERSONALLY DELIVERED BY HAND ON RESPONDENT

Served by me at **Hartford, Connecticut** on **December 4,** 19**74** at **4:35 P. m.**
cc: **Joseph Zinnania, Supervisor**
Interstate Division of Parole
340 Capitol Avenue
Hartford, Connecticut 06115
cc: **Warden**
Hartford Correctional Center
72 Sayne Street
/Jab H Hartford, Connecticut
Austin C. Mattson
Austin C. Mattson, Investigator

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- Page 2 of 2 pages -

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the
Immigration and Nationality Act

UNITED STATES OF AMERICA

In the matter of

HECTOR ADOLFO MONTOYA-ALVAREZ

Respondent

)
)
)
)
)

File No. A18 561 513

CONTINUATION SHEET

ALLEGATIONS OF FACT CONTINUED FROM PAGE 1 OF 2 PAGES:

4. At that time you were admitted as a temporary visitor for pleasure and were authorized to remain in the United States with that status until September 7, 1969;
5. You were thereafter granted a period in which to depart from the United States voluntarily on or before July 14, 1969;
6. You have remained in the United States beyond July 14, 1969 without authority of the United States Immigration and Naturalization Service;

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

File No. A18 501 813

In the Matter of

HECTOR MONTUÑA-ALVAREZ

Respondent.

)
) In Deportation Proceedings under
) Section 242 of the Immigration
) and Nationality Act
)
) **ADDITIONAL CHARGES**
) **OF DEPORTABILITY**
)

To: **Mr. Hector MONTUÑA-ALVAREZ**

(name)

**13 Benton Street
Hartford, Connecticut**

(address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241 (a) (9) of the I & N Act, in that, after admission as a nonimmigrant under Section 101 (a) (15) of said Act, you failed to comply with the conditions of the nonimmigrant status under which you were admitted.

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

7. At that time you were admitted as a temporary visitor for pleasure and were authorized to remain in the United States in that status until June 4, 1969;
8. You were employed in the United States without permission from the United States Immigration and Naturalization Service for the Caval Tool and Machine Company at a salary of \$3.25 per hour from March 1969 to June 23, 1969;

ON RESPONDENT - CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CC: **Stephen B. Horton, Esq.**
Cardwell & Cardwell
108 Oak Street
Hartford, Conn.

Form I-201
(Rev. 12-15-66)

December 16, 1974

Date

Paul H. Smith
Paul H. Smith
Trial Attorney

(FOI 917, 217)

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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 18 561 513 & A10 375 951

HECTOR ADOLFO MONTOYA-ALVAREZ
and his wife
ESPERANZA DE MONTOYA

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Eugene C. Cassidy Immigration Judge

Date: December 16, 1974 Place: Hartford, Connecticut

Transcribed by Barbara M. Balon Recorded by Gray Autograph

Official Interpreter Mrs. Margarita Miller

Language Spanish

APPEARANCES:

For the Service:

Ralph J. Smith

Trial Attorney

Hartford, Connecticut

Station

For the Respondent:

Stephen B. Horton, Esq.

Cardwell & Cardwell

108 Oak Street

Hartford, Connecticut

1 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

2 Q What is your name?

3 A Hector Adolfo Montoya.

4 Q Do you understand this lady when she speaks to you in the Spanish
5 language?

6 A I will try to understand.

7 Q Are you having some difficulty understanding this lady? Does she not speak
8 the language that you speak?

9 A Well, I understand her.

10 Q Is the lady beside you your wife?

11 A Yes, sir.

12 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

13 Q What is your name?

14 A Esperanza Montoya.

15 Q Do you understand this lady when she speaks to you in the Spanish
16 language?

17 A Yes.

18 IMMIGRATION JUDGE:

19 The official interpreter present is Mrs. Margarita Miller.

20 IMMIGRATION JUDGE TO BOTH RESPONDENTS THROUGH INTERPRETER:

21 Q This hearing is to determine whether either or both of you shall be
22 deported from the United States. At this hearing, each of you will have
23 an opportunity to show why you should not be deported.

24 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

25 Q Do you understand?

26 A Yes.

-1-

TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

2 Q Do you understand?

3 A Yes.

4 IMMIGRATION JUDGE TO BOTH RESPONDENTS THROUGH INTERPRETER:

5 Q Is Mr. Horton attorney for both of you?

6 MALE RESPONDENT:

7 A Yes.

8 IMMIGRATION JUDGE TO COUNSEL:

9 Q Counsel, would you please identify yourself for the record?

10 A Yes, Attorney Stephen B. Horton, law firm of Cardwell and Cardwell,
11 108 Oak Street, Hartford, Connecticut, a member of the Supreme Court
12 of the State of Connecticut, representing both respondents. Your
13 Honor, at this time may the record reflect that present also is
14 Mr. Richard Kletjian, the employer of Mr. Montoya.

15 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

16 Q Will you please identify yourself for the record?

17 A Ralph J. Smith, Trial Attorney, Boston.

18 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

19 Q Will you please stand and raise your right hand. Do you solemnly swear
20 the testimony you give is the truth, the whole truth, and nothing but
21 the truth, so help you God?

22 A I do.

23 IMMIGRATION JUDGE TO MALE RESPONDENT (WITHOUT INTERPRETER):

24 Q Do you speak English?

25 A Yes, sir.

26 Q Would you prefer to speak in English or in Spanish?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Spanish.

2 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

3 Q Will you please stand up and raise your right hand. Do you solemnly
4 swear the testimony you give is the truth, the whole truth, and nothing
5 but the truth, so help you God?

6 A I do.

7 Q Have a seat.

8 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

9 Q Did you receive a copy of this Order to Show Cause and Notice of Hearing
10 issued in the case of Hector Adolfo Montoya-Alvarez on December 4, 1974?

11 A Yes.

12 IMMIGRATION JUDGE:

13 The Order to Show Cause as to the male respondent is marked EXHIBIT
14 NO. 1.

15 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

16 Q Has this been read for you in the Spanish language or have you
17 read it yourself so that you know the contents?

18 A I read it.

19 Q Do you understand that it is charged that you are deportable because you
20 were admitted as a visitor for a limited time and you have remained
21 without authority for longer than that time? That is the charge. Do
22 you understand?

23 A Yes, sir.

24 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

25 Q I show you a similar Order to Show Cause and Notice of Hearing issued
26 in the case of Esperanza de Montoya on December 10, 1974. Did you

1 receive a copy of this?

2 A Yes.

3 IMMIGRATION JUDGE:

4 The Order to Show Cause as to the female respondent is marked EXHIBIT
5 NO. 2.

6 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

7 Q Has this been read for you in the Spanish language or have you read it
8 yourself so that you understand what it says?

9 A Somebody read it to me in Spanish.

10 Q Do you understand the charge is the same as in the case of your husband--
11 that you entered the United States as a visitor. You were admitted
12 for a limited time, and you have remained without permission for longer
13 than the time allowed?

14 A Yes.

15 IMMIGRATION JUDGE:

16 The Order to Show Cause in each case states, first, you are not a citizen
17 or national of the United States and, second, you are a native of
18 Colombia and a citizen of Colombia.

19 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

20 Q Are those statements true as to you?

21 A Yes.

22 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

23 Q Are those statements true as to you?

24 A Yes.

25 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

26 Q Now, Mr. Montoya, the Order to Show Cause in your case states you

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 entered the United States at Miami, Florida, on or about February 2,
2 1969, and that, at that time, you were admitted as a temporary visitor
3 for pleasure and were authorized to remain in the United States with
4 that status until September 7, 1969. Are those statements true?

5 A Yes, it's true.

6 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

7 Q Mrs. Montoya, in your case, the third statement is that you entered
8 the United States at Miami, Florida, on or about October 12, 1968,
9 and, fourth, at that time, you were admitted as a temporary visitor for
10 pleasure and you were authorized to remain in the United States in
11 that status until November 12, 1968. Are those statements true?

12 A Yes.

13 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

14 Q And, Mr. Montoya, in your case the fifth statement is you were thereafter
15 granted a period in which to depart from the United States voluntarily
16 on or before July 14, 1969, and, sixth, you have remained in the
17 United States beyond July 14, 1969, without authority of the United
18 States Immigration and Naturalization Service. Are those statements
19 true?

20 A I applied for two extensions, and they were granted.

21 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

22 Q The fifth allegation in your case is you were thereafter granted a
23 period in which to depart from the United States voluntarily on or
24 before June 5, 1969, and, sixth, you have remained in the United States
25 beyond June 5, 1969, without authority of the United States Immigration
26 and Naturalization Service. Are those statements true?

-5-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Yes.
2 Q Now, Mrs. Montoya, it is charged that, because of the facts stated, you
3 are subject to being deported under the provisions of Section 241(a)(2)
4 of the Immigration and Nationality Act, in that, after admission as a
5 nonimmigrant under Section 101(a)(15) of said Act, you have remained
6 in the United States for a longer time than permitted. As I told you,
7 more simply stated, the charge is you are deportable because you were
8 admitted as a visitor for a limited time and have remained without
9 authority for longer than that time. Do you admit that you are de-
10 portable on this charge or do you. . .

11 COUNSEL:

12 No, Your Honor, deportation is not admitted.

13 IMMIGRATION JUDGE:

14 All right.

15 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

16 Mr. Smith, you may proceed.

17 TRIAL ATTORNEY TO IMMIGRATION JUDGE:

18 With respect to the female respondent, the Government would rest on the
19 allegations admitted by the respondent on the Order to Show Cause.

20 IMMIGRATION JUDGE TO COUNSEL:

21 Q Mr. Horton, do you wish to be heard on that at this time?

22 A Yes, Your Honor, at this time with respect to deportation and de-
23 portability alone, I would raise three Constitutional issues. I
24 realize, of course, the court's position but I think that, at this time,
25 it is mandatory that we raise them. No. 1--that deporting the parents
26 of a U. S. citizen child, and I would like to examine on that, raises

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 the issue and I believe that it is constructive deportation of a
2 U. S. citizen which, of course, is contrary to the Constitution. No. 2--
3 with respect to the equal protection provisions of the statute, No. 1--
4 the inability of alien parents of a U. S. citizen child under the age
5 of 21 to obtain derivative residency from that equity as opposed to the
6 ability of the parents of a child over 21, I believe, is violative of
7 the equal protection and due process of law. Furthermore, Your Honor,
8 as a third point, to raise an issue, the entire Western Hemisphere
9 system of allocation of alien permits, particularly with respect to
10 the parents of a U. S. citizen child, is unreasonably discriminatory as
11 opposed to that of the Eastern Hemisphere and is, on that basis, un-
12 constitutional. At this time, Your Honor, I would like to examine
13 the parties, the respondents, with respect to their parentage and their
14 marriage, if I may, for the record.

15 IMMIGRATION JUDGE:

16 All right, well, now, in the case of the male respondent, there's not
17 yet a prima facie showing of deportability.

18 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

19 Q Mr. Smith, do you wish to be heard on that?

20 A Yes, I do, sir. Your Honor, I offer into evidence a copy of a letter
21 from the Assistant District Director of Investigations dated June 24,
22 1969, addressed to the respondent indicating that he was required to
23 depart from the United States on or before July 14, 1969, and I'll show
24 it to counsel.

25 COUNSEL TO TRIAL ATTORNEY:

26 Mr. Smith, I am puzzled by this only to the extent that the allegations

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

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1 show that he was permitted to remain until September. There appears
2 to be a controversy, but I have no objection to it.
3 TRIAL ATTORNEY:
4 It does. Nevertheless, I'll offer it into evidence.
5 IMMIGRATION JUDGE:
6 The document is marked EXHIBIT NO. 3.
7 IMMIGRATION JUDGE TO TRIAL ATTORNEY:
8 Go ahead, Mr. Smith.
9 TRIAL ATTORNEY TO MALE RESPONDENT THROUGH INTERPRETER:
10 Q Mr. Montoya, please look at this affidavit and tell me whether or not
11 your signature appears on the bottom portion thereof.
12 A Yes, it is.
13 TRIAL ATTORNEY TO IMMIGRATION JUDGE:
14 Your Honor, I offer this affidavit into evidence, and I'll show it to
15 counsel.
16 COUNSEL:
17 I have no objection.
18 IMMIGRATION JUDGE:
19 Received and marked EXHIBIT NO. 4.
20 IMMIGRATION JUDGE TO TRIAL ATTORNEY:
21 Go ahead, Mr. Smith.
22 TRIAL ATTORNEY TO IMMIGRATION JUDGE:
23 Your Honor, at this time, the Government would move to amend the
24 allegation No. 5 to read "on or before August 6, 1949."
25 IMMIGRATION JUDGE TO TRIAL ATTORNEY:
26 Q Well, Mr. Smith, do you want to lodge a new allegation? I can't amend

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

FORM I-299
(7-28-67)

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1 it. If you want it changed, there's a procedure for doing it.
2 A Yes, I'll have a brief recess if I may, Your Honor. I so move.
3

4 THE HEARING IS ADJOURNED.
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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

HECTOR ADOLFO MONTOYA-ALVAREZ
and his wife
ESPERANZA DE MONTOYA

FILE A- 18 561 513 & A19 375 951

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Eugene C. Cassidy Immigration Judge

Date: January 6, 1975 Place: Hartford, Connecticut

Transcribed by Barbara M. Balen Recorded by Gray Audiograph

Official Interpreter Mrs. Margarita Miller

Language Spanish

APPEARANCES:

For the Service:

Ralph J. Smith
Trial Attorney
Hartford, Connecticut

Station

For the Respondent:

Stephen B. Horton, Esq.
Cardwell & Cardwell
108 Oak Street

Hartford, Connecticut

1 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

2 Q What is your name?

3 A Hector Adolfo Montoya-Alvarez.

4 Q Do you understand this is a continuation of the deportation hearing
5 started in your case last month?

6 A Yes, sir.

7 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

8 Q What is your name?

9 A Esperanza Montoya.

10 Q Do you understand this is a continuation of the deportation hearing?

11 A Yes.

12 IMMIGRATION JUDGE:

13 Let the record show Attorney Stephen B. Norton of Cardwell and Cardwell,
14 Hartford, is present in behalf of the respondents. Ralph J. Smith is
15 Trial Attorney, and Margarita Miller continues as interpreter.

16 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

17 Q Will you please stand up and raise your right hand. Do you solemnly
18 swear the testimony you give is the truth, the whole truth, and nothing
19 but the truth, so help you God?

20 A Yes, I do.

21 Q Have a seat.

22 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

23 Q Would you please stand up and raise your right hand. Do you solemnly
24 swear the testimony you give is the truth, the whole truth, and nothing
25 but the truth, so help you God?

26 A Yes.

1 Q Have a seat.

2 IMMIGRATION JUDGE:

3 A new charge has been lodged against the ^{male}respondent on December 16th
4 and, because of a lack of help, there was a delay in having this
5 typed up. Mr. Horton had duties elsewhere and asked to be excused, and
6 it was agreed at that time that Mr. Horton could leave and that the
7 lodged charge would be prepared in due course. The lodged charge is
8 now placed in evidence as EXHIBIT NO. 5.

9 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

10 Q This relates only to you and this charge is that you are deportable
11 under Section 241(a)(9) of the Immigration and Nationality Act, in that,
12 after admission as a nonimmigrant under Section 101(a)(15) of said Act,
13 you failed to comply with the conditions of the nonimmigrant status
14 under which you were admitted. Now, more simply stated, that charge
15 is that you are now deportable because you were admitted as a visitor
16 for pleasure and you went to work, and it states on this statement
17 that, after you entered the United States, you went to work without
18 permission for Caval Tool and Machine Company. Do you understand
19 this lodged charge?

20 A Yes, sir.

21 Q The additional facts stated are No. 7--that, at the time of your
22 entry, you were admitted as a temporary visitor for pleasure, and
23 you were authorized to remain in the United States in that status until
24 June 4, 1969. Is that true?

25 A Yes.

26 A And No. 8, you were employed in the United States without permission

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 from the United States Immigration and Naturalization Service for the
2 Caval Tool and Machine Company at a salary of \$2.25 per hour from
3 March 1969 to June 23, 1969. Is that true?

4 A Yes, sir.

5 Q And the lodged charge is that you are deportable, as I have told you,
6 because, after being admitted as a visitor for pleasure, you went to
7 work and thus failed to comply with the conditions under which
8 you were admitted. Do you admit that you are deportable on this charge?

9 COUNSEL:

10 No, Your Honor, deportability is not admitted.

11 IMMIGRATION JUDGE TO COUNSEL:

12 Q Mr. Horton, would the basis for that be the same as the three grounds
13 you stated in the case of the gentleman's wife?

14 A Yes, Your Honor.

15 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

16 All right, Mr. Smith.

17 TRIAL ATTORNEY:

18 The Government would rest on the allegations admitted by the respondent
19 on the additional charge of deportability and the lodged charges therein.

20 IMMIGRATION JUDGE TO COUNSEL:

21 Q All right, then, Mr. Horton, did you wish to be heard on the issue of
22 deportability?

23 A I do, Your Honor, but if the court would indulge me, I wish to examine
24 briefly to establish a record. I think that the court and I have gone
25 through the question of raising Constitutional issues at trial level,
26 and I would like to do so briefly so that I may establish a record

1 on a few ^{minutes} without taking sufficient time as to become burdensome here.

2 Q All right, go ahead.

3 A Thank you.

4 COUNSEL TO MALE RESPONDENT:

5 Q Mr. Montoya, you are married to the respondent also, Esperanza Montoya.

6 Is that correct?

7 A Yes.

8 Q And you have a child?

9 A I got one.

10 COUNSEL TO IMMIGRATION JUDGE:

11 All right, now, I believe. . . Your Honor, did we introduce the birth
12 certificate as an exhibit?

13 IMMIGRATION JUDGE:

14 No, the birth certificate is not an exhibit.

15 COUNSEL:

16 All right, Your Honor.

17 IMMIGRATION JUDGE:

18 Let the record show the original and a photostatic copy of a birth
19 certificate of the child, Hector Adolfo Montoya, Jr., was compared by
20 the Trial Attorney. The original is returned to counsel. The copy
21 is marked EXHIBIT NO. 6.

22 IMMIGRATION JUDGE TO COUNSEL:

23 Go ahead, Mr. Horton.

24 COUNSEL:

25 Thank you, Your Honor.

26 COUNSEL TO MALE RESPONDENT:

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1 Q Now, you were married at Hartford, Connecticut, is that correct, on the
2 8th of June 1974? Is that correct?
3 A (No response heard)
4 Q Okay. Hector Adolfo was born in New York City?
5 A Yes.
6 Q And he was born on February 19, 1971?
7 A Yes.
8 COUNSEL TO IMMIGRATION JUDGE:
9 That was prior to 1974, Your Honor. 1971 was the birth of the child.
10 COUNSEL TO MALE RESPONDENT:
11 Q That was prior to the time that you two were married. Is that correct?
12 A Yes.
13 COUNSEL TO FEMALE RESPONDENT THROUGH INTERPRETER:
14 Q Is Hector Montoya the father of this child?
15 A Yes.
16 Q Is he the same Hector Adolfo Montoya whose name appears on the birth
17 certificate?
18 A Yes.
19 COUNSEL TO MALE RESPONDENT:
20 Q Mr. Montoya, do you acknowledge being the legal father of this child?
21 A Yes.
22 Q And is it your name that appears on his birth certificate?
23 A Yes, sir.
24 Q Okay, now, if you are deported to your country, would that child reside
25 with you in Colombia?
26 A Yes.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q And do you see any alternative so that that child, who is a United
2 States citizen, could possibly remain here?

3 A Yes.

4 Q Is there any way he could remain here?

5 A Yes.

6 Q How could he remain here?

7 A Well, I. . .

8 COUNSEL TO IMMIGRATION JUDGE:

9 May I work through the interpreter on this question?

10 IMMIGRATION JUDGE:

11 Well, I thought we were working through the interpreter entirely, but
12 the man chooses to speak English occasionally, and I wouldn't continue
13 with it.

14 IMMIGRATION JUDGE TO MALE RESPONDENT:

15 Now, you may have misunderstood Mr. Horton's question, so let the
16 interpreter ask you.

17 MALE RESPONDENT THROUGH INTERPRETER:

18 A I don't see any way of the child staying here without us.

19 COUNSEL TO MALE RESPONDENT THROUGH INTERPRETER:

20 Q Is there any family here who are in a financial position to support the
21 child?

22 A No.

23 COUNSEL TO IMMIGRATION JUDGE:

24 I have no further questions along those lines, Your Honor.

25 IMMIGRATION JUDGE:

26 Q If the respondents are to depart, do they wish to leave voluntarily?

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 MALE RESPONDENT THROUGH INTERPRETER:

2 A Sure.

3 IMMIGRATION JUDGE TO COUNSEL:

4 Q Mr. Horton, do you wish to be heard on that?

5 A Yes, I wish to apply for voluntary departure. I would point out most
6 importantly that Mrs. Montoya voluntarily surrendered herself in
7 order to be present for this hearing. Mr. Montoya did not but he
8 certainly co-operated fully after having discussed his financial
9 circumstances with me. He is adequately able to provide his own
10 transportation and that of his wife and that he will do so at such time
11 as this court shall order or when all further extensions thereof have
12 expired.

13 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

14 Q Mr. Smith, do you wish to be heard on this?

15 A Yes, I do.

16 TRIAL ATTORNEY TO BOTH RESPONDENTS THROUGH INTERPRETER:

17 Q Have either of you ever been arrested any place in the world other than
18 this immigration violation?

19 A No, never.

20 TRIAL ATTORNEY TO MALE RESPONDENT THROUGH INTERPRETER:

21 Q Are you working at present?

22 A Yes.

23 TRIAL ATTORNEY TO FEMALE RESPONDENT THROUGH INTERPRETER:

24 Q Are you working at present?

25 A Yes.

26 TRIAL ATTORNEY TO BOTH RESPONDENTS THROUGH INTERPRETER:

1 Q Have either of you ever been on welfare or received public assistance of
2 any kind?

3 MALE RESPONDENT:

4 A No.

5 TRIAL ATTORNEY TO FEMALE RESPONDENT THROUGH INTERPRETER:

6 Q Has any assistance been given to your child?

7 A (No answer heard)

8 IMMIGRATION JUDGE:

9 Excuse me. Now, don't make this a general conversation. The lady was
10 asked a question and let her answer it.

11 FEMALE RESPONDENT THROUGH INTERPRETER:

12 A No, he never needed it.

13 TRIAL ATTORNEY:

14 Q And do you have the funds to pay for your own passage out of the United
15 States?

16 MALE RESPONDENT:

17 A Yes.

18 TRIAL ATTORNEY TO BOTH RESPONDENTS THROUGH INTERPRETER:

19 Q Now, if you are ordered deported, to what country do you wish to go to?

20 A To Colombia, my country.

21 TRIAL ATTORNEY TO IMMIGRATION JUDGE:

22 I have no further questions, Your Honor.

23 IMMIGRATION JUDGE TO COUNSEL:

24 Q Anything else, Mr. Horton?

25 A No, Your Honor.

26 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Is there anything else you wish to say or to have considered before I
2 make a decision?

3 A No.

4 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

5 Q Is there anything else you wish to say or have considered now before
6 I make a decision?

7 A No.

8 (At this point in the proceedings, the
9 Immigration Judge orally stated his decision
10 which consists of a discussion of the evidence,
11 findings of fact, conclusions of law, and an
12 order which are transcribed separately and
13 made a part hereof.)

14 IMMIGRATION JUDGE TO MALE RESPONDENT THROUGH INTERPRETER:

15 Q Do you understand this decision?

16 A Yes.

17 IMMIGRATION JUDGE TO FEMALE RESPONDENT THROUGH INTERPRETER:

18 Q Do you understand?

19 A Yes.

20 IMMIGRATION JUDGE TO COUNSEL:

21 Q Mr. Horton, do you wish to take an appeal from this decision?

22 A I do, Your Honor.

23 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

24 Q Mr. Smith?

25 A No appeal, sir.

26 IMMIGRATION JUDGE TO COUNSEL:

1 All right, Mr. Horton, an appeal, if one is to be taken, must be filed
2 with the District Director in this office on or before January 16, 1975,
3 ten days from today. I will give you the necessary forms. You are
4 well acquainted with the matter of taking an appeal. It is filed in
5 triplicate. The fee is \$25. If an appeal is filed on or before
6 January 16th, the entire record will go to the Board of Immigration
7 Appeals, which will then enter a final decision. If no appeal is filed
8 on or before January 16th, the decision as entered today is final.
9

10 THE HEARING IS CLOSED.
11
12

13 -----
14 I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND
15 BELIEF THE FOREGOING PAGES NUMBERED 1 TO 19 ARE A
16 COMPLETE AND ACCURATE TRANSCRIPT OF THE ABOVE DESCRIBED
17 PROCEEDING.
18

19 _____
20 Transcriber
21
22
23
24
25
26

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File Nos.: A18 561 513 and
A19 375 951

- Hartford, Connecticut

January 6, 1975

In the Matter of:

Nector Adolfo Montoya-Alvarez)

and his wife)

Esperanza de Montoya)

Respondents)

IN DEPORTATION PROCEEDINGS

CHARGE (As to each):

Immigration and Nationality Act,
Section 241(a)(2) (8 USC 1251(a)(2))
Nonimmigrant visitor - remained
longer.

LOADED CHARGE AS TO MALE ALIEN:

Immigration and Nationality Act,
Section 241(a)(9) (8 USC 1251(a)(9))
Nonimmigrant visitor - failed to
comply.

APPLICATION (By each):

Termination of proceedings -
voluntary departure.

IN BEHALF OF RESPONDENTS:

Stephen B. Horton, Esq.
Cardwell & Cardwell
106 Oak Street
Hartford, Connecticut

IN BEHALF OF SERVICE:

Ralph J. Smith
Trial Attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

This record relates to a 34-year-old, married, male alien and his 24-year-old wife, each of whom is a native and citizen of Colombia. The male respondent

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was admitted into the United States as a nonimmigrant visitor for pleasure on or about February 2, 1969, and was authorized to remain in that status until June 4, 1969.

The female respondent was admitted into the United States as a nonimmigrant visitor for pleasure on or about October 12, 1968, and was permitted to remain in that status until November 12, 1968. She was thereafter granted a period for voluntary departure to be effected on or before June 5, 1969. She remained thereafter without authority.

The female respondent admitted that all of the factual allegations in the Order to Show Cause relating to her are true but she did not admit deportability as charged. She stated, through counsel, that deportability is not admitted because she believes that her deportation would be in violation of her Constitutional Rights and the Constitutional Rights of her United States citizen child.

In the case of the male respondent, the Order to Show Cause alleges, fourth, that he was permitted to remain in the United States as a nonimmigrant visitor until September 7, 1969, and, fifth, that "thereafter" he was granted voluntary departure to be effected on or before July 14, 1969, a date prior to the date until which he was allegedly admitted. The sixth allegation is that he remained beyond July 14, 1969, without authority of the United States Immigration and Naturalization Service, which is in contradiction of the fourth allegation, which states that he was authorized to remain as a nonimmigrant visitor until September 7, 1969. In view of these discrepancies

and notwithstanding that evidence was presented (Exhibit 3) that the respondent was directed to depart on or before July 14, 1969, an additional charge was lodged.

The additional charge lodged against the male respondent is that he is deportable, in that, after admission as a nonimmigrant visitor for pleasure he failed to comply with the conditions under which he was admitted. This charge is based on an allegation that he was employed in the United States, without the permission of the United States Immigration and Naturalization Service, by the Caval Tool and Machine Company at a salary of \$2.25 an hour from March 1968 until June 23, 1969. The male respondent admitted that both additional factual allegations lodged with the additional charge of deportability are true. He did not admit deportability as charged. He cites the same reasons as were urged in behalf of his wife.

All of the factual allegations in the Order to Show Cause relating to the female respondent are admitted to be true. The first four factual allegations in the Order to Show Cause as to the male respondent and the two factual allegations in the additional charge of deportability as to him are admittedly true. Deportability was not admitted in either case.

Counsel urged on behalf of the respondents that neither is deportable because the deportation of alien parents of a United States citizen deprives the child of his Constitutional Rights, in that, such deportation of the parents is constructive deportation of the child. He further urged that the law and regulations relating to immigration and the issuance of visas to prospective

immigrants are unconstitutional, in that, they deprive an alien of equal protection of the laws, in that, a difference in the preference status is granted to the alien parent if a citizen child is under twenty-one than would be granted if the citizen child was over twenty-one years old. He further urged that the equal protection provisions of the Constitution are violated by "discrimination" as to immigration between natives of the Eastern Hemisphere and of the Western Hemisphere who are parents of United States citizen children.

It has been uniformly held in several circuits that the deportation of parents of a United States citizen child do not deprive him of Constitutional Rights. (Robles v. I & N. S., 485 F 2d 100 (10th Circuit, 1973); Silverman v. Rogers, 437 F 2d 102 (1st Circuit, 1970); cert. den. 402 U.S. 983 (1971); Perdido v. I & N. S., 439 F 2d 1179 (5th Circuit, 1969); Agosto v. I & N. S., 443 F 2d 917 (9th Circuit, 1971); Aalund v. Marshall, 461 F 2d 710, 714 (5th Circuit, 1972)). The equal protection argument has arisen in many cases and courts have found that the Congress can make such provisions relating to immigration as it sees fit to differentiate between classes of persons and to provide different categories for immigration purposes. In any case, the Immigration Judge has no authority to determine questions as to the constitutionality of provisions of the Immigration Laws.

Each of the respondents is found to be deportable. The female respondent as charged in the Order to Show Cause is based on her own admissions of all of the factual allegations in the Order to Show Cause. The male respondent

is found to be deportable on the lodged charge only based on his admissions of the first four factual allegations in the Order to Show Cause and the two additional factual allegations in the additional charges of deportability (Exhibit 5).

Each of the respondents has applied for the privilege of voluntary departure from the United States without expense to the Government in lieu of deportation. Neither has ever been arrested. Neither has ever been a member of a subversive organization. They have funds with which to effect departure without expense to the United States Government, and each has expressed willingness to go within the time and under the conditions set for departure subject to their right of further appeal on the issues raised. Both of the respondents are employed, and neither has ever been the recipient of state or local welfare funds. Each will be granted the privilege of voluntary departure as a matter of discretion. Each of the respondents has elected, in the event he is ordered to be deported, that he be deported to Colombia.

For the purpose of this decision, the allegations of fact contained in the Order to Show Cause relating to the female respondent are adopted as findings of fact, and the charge as to deportability contained in the Order to Show Cause relating to her is adopted as a conclusion of law.

In the case of the male respondent, the first four factual allegations in the Order to Show Cause are adopted as findings of fact as are the seventh and eighth factual allegations as stated in the additional charges of deportability. The charge as to deportability contained in the additional

charges of deportability, the lodged charge, is adopted as a conclusion of law as to the male respondent.

ORDER: IT IS ORDERED that, in lieu of an order of deportation, each of the respondents be granted voluntary departure without expense to the Government on or before February 6, 1975, or any extension beyond that date as is granted by the District Director and under such conditions as he shall direct.

IT IS FURTHER ORDERED that, if either or both of the respondents fail to depart voluntarily when and as required, the privilege of voluntary departure shall be withdrawn as to each such respondent without further notice or proceedings and the following order shall become immediately effective as to each such respondent: The respondents shall be deported from the United States to Colombia on the charge contained in the Order to Show Cause.

S.C.C.

EUGENE C. CASSIDY - IMMIGRATION
JUDGE

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

135 High Street

Hartford, Connecticut

Fee Stamp

In the Matter of: "Both of them"
HECTOR A. MONTOYA-ALVAREZ
ESPERANZA DE MONTOYA

File No. A18 561 513 (Hector)
A19 375 951 (Esperanza)

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated January 6, 1975 in the above entitled case.

2. Briefly, state reasons for this appeal. 1. The respondents are parents of a U.S. Citizen child. Deporting the parents will effectively and constructively deport a U.S. Citizen; which deportation is contrary to the due process clause of the United States Constitution. 2. The respondents maintain that Section 101(a) 27 of the Immigration and Nationality Act which discriminates between residents of the eastern hemisphere and those of the western hemisphere is contrary to the equal protection provisions of the United States Constitution. 3. The petitioners maintain that Section 201b of the Immigration & Nationality Act which discriminates between parents of a U.S. Citizen under the age of 21 years and those of a U.S. Citizen over the age of 21 years is violative of the equal protection clause of the United States Constitution.

3. I do (do) (do not) desire oral argument before the Board of Immigration Appeals in Washington, D. C.

4. I am not (am) (am not) filing a separate written brief or statement.

Signature of Appellant (or attorney or representative)

STEPHEN B. HORTON, ESQ.

(Print or type name)

Cardwell & Cardwell

101 Oak St., Htfd., Conn. 06106

Address (Number, Street, City, State, Zip Code)

January 8, 1975

Date

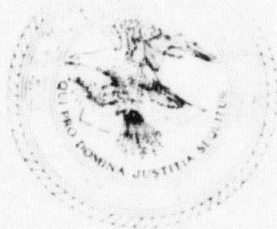
IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

INSTRUCTIONS

1. **Fees.** This notice of appeal must be accompanied by a fee of \$25. (Only a single fee need be paid if two or more persons are covered by a single decision.) Attach money order or check, payable to the "Immigration and Naturalization Service, Department of Justice." Do NOT send cash. If this form is filed in Guam, make remittance payable to the "Treasurer, Guam;" if filed in the Virgin Islands, make remittance payable to "Commissioner of Finance of the Virgin Islands." The fee is required for filing the appeal and is not returnable regardless of the action taken thereon.
2. **Counsel.** In presenting and prosecuting this appeal the appellant may, if he desires, be represented at no expense to the Government by counsel or other duly authorized representatives. No interpreters are furnished by the Government for the argument before the Board.
3. **Briefs.** A brief in support of or in opposition to an appeal is not required, but if a brief is filed it shall be in triplicate and submitted to the officer of the Immigration and Naturalization Service having administrative jurisdiction over the case within the time fixed for the appeal or within any other additional period designated by the special inquiry officer or other Service officer who made the decision. Such officer, or the Board for good cause, may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.
4. **Oral argument.** Oral argument shall not be heard on appeal from an order of a special inquiry officer denying a motion to reopen or reconsider or stay deportation, unless specifically directed by the Board. Oral argument is optional; no personal appearance by the appellant or counsel is required. The Board will consider every case on the record submitted, whether or not oral representations are made. Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements for additional time are made with the Board in advance of the hearing.

An appellant will not be released from detention or permitted to enter the United States to present oral argument to the Board but may make arrangements to have someone represent him before the Board, and unless such arrangements are made at the time the appeal is taken, the Board will not calendar the case for argument.
5. **No appeal.** There is no appeal from an order of a special inquiry officer granting voluntary departure within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed.
6. **Summary dismissal of appeals.** The Board may deny oral argument and summarily dismiss any appeal in any deportation proceeding in which (i) the party concerned fails to specify the reason for his appeal on the reverse side of this form, (ii) the only reason specified by the party concerned for his Appeal involves a finding of fact or conclusion of law which was conceded by him at the hearing, (iii) the appeal is from an order that grants the party concerned the relief which he requested, or (iv) if the Board is satisfied, from a review of the record, that the appeal is frivolous and filed solely for purposes of delay.
7. **FILING OF NOTICE OF APPEAL.** THE NOTICE OF APPEAL, IN TRIPLICATE, WITH THE REQUIRED FEE, *MUST* BE SUBMITTED TO THE IMMIGRATION AND NATURALIZATION SERVICE OFFICE WHERE THE CASE IS PENDING. THE NOTICE OF APPEAL IS *NOT* TO BE FORWARDED DIRECTLY TO THE BOARD OF IMMIGRATION APPEALS.

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United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

Files: A18 561 513 - Hartford
A19 375 951

JAN 21 1976

In re: HECTOR ADOLFO MONTOYA-ALVAREZ
ESPERANZA DE MONTOYA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Stephen B. Horton, Esq.
Cardwell & Cardwell
108 Oak Street
Hartford, CT 06106

ON BEHALF OF I&N SERVICE: George Indelicato, Esq.
Appellate Trial Attorney

ORAL ARGUMENT: November 10, 1975

CHARGE:

ORDER: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Nonimmigrant visitor
- remained longer (both respondents)

APPLICATION: Termination

In a decision dated January 6, 1975, the immigration judge found the respondents deportable, ordered their deportation, and granted them the privilege of voluntary departure. The respondents have appealed from that decision. The appeal of the male respondent will be dismissed; the case of the female respondent was rendered moot during the pendency of this appeal by her departure.

The respondents, husband and wife, are natives and citizens of Colombia. They entered into the United States on or about February 2, 1969, and November 12, 1968, respectively. Both respondents have remained longer than authorized.

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The respondents' United States citizen child was born on February 19, 1971; they were subsequently married on June 8, 1974.

At oral argument on November 10, 1975, we were informed by counsel that during the pendency of this appeal, the female respondent along with her United States citizen child, has departed from the United States. Under 8 C.F.R. 3.4 such departure constitutes a withdrawal of the appeal and leaves the immigration judge's order, as to her, as the final decision in the case, to the same extent as though no appeal had been taken. We shall therefore return her record to the Service without further action by us.

As to the male respondent we agree with the immigration judge that his deportability has been established by clear, convincing and unequivocal evidence.

The only contention counsel pressed at oral argument, was that section 101(a)(27) of the Immigration and Nationality Act, which relates to special immigrants is contrary to the equal protection provisions of the Constitution. Neither we nor the immigration judge may consider such a challenge to the statutes we administer. See Matter of Chavarri-Alva, Interim Decision 2188 (BIA 1973); Matter of Santana, 13 I&N Dec. 362 (BIA 1969); Matter of L-, 4 I&N Dec. 556 (BIA 1951).

The immigration judge's decision as to the male respondent was correct. The appeal as to him will accordingly be dismissed.

ORDER: The appeal of the male respondent is dismissed.

ORDER: The record of the female respondent is returned to the Service.

FURTHER ORDER: Pursuant to the immigration judge's order, the male respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension

A18 561 513
A19 375 951

beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

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